

BOARD OF APPEALS CASE NO. 5068

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BEFORE THE

APPLICANT: Thomas Mohan

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to store
commercial vehicles in the Agricultural District;
4943 St. Pauls Church Road, Pylesville**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/21/00 & 7/26/00

HEARING DATE: August 23, 2000

Record: 7/21/00 & 7/28/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant, Thomas S. Mohan, is seeking a Special Exception pursuant to Section 267-53D(1) of the Harford County Code, to allow storage of commercial vehicles in an AG/ Agricultural District.

The subject parcel is located at 4943 Saint Paul Church Road and is more particularly identified on Tax Map 9, Grid 2A, Parcel 228. The subject parcel consists of 12.419 acres more or less, is zoned AG/Agricultural, and is entirely within the Fourth Election District.

Mr. Thomas S. Mohan appeared and testified that he operates a trucking business from the subject parcel which includes 2 dump trucks, 1 tag-along, 1 backhoe, 1 loader. The Applicant would ultimately like to construct a building on site to house all of the described equipment. The Applicant has several employees that arrive and leave from the site each day. Hours of operation are from 6:00 a.m. to approximately 6:00 p.m. Monday through Friday and 6:00 a.m. to noon on Saturdays, as needed. The Applicant described the property as entirely forested except for the location where the equipment is stored. The storage area is not visible from any other property. The Applicant's property is surrounded by similarly forested agricultural zoned parcels. The Applicant stated that his use would not impact any adjoining neighbors at all.

Mr. Calvin Busha, who resides at 4909 St. Paul Church Road, appeared and testified that he supported the application. The witness did not believe approval of the request would have any impact at all.

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Mr. Richard Kestner appeared and testified that his property adjoins the subject property to the northwest. The witness expressed support for the application stating that no adverse impact would result from approval.

The Department of Planning and Zoning's Staff Report, dated August 3, 2000 recommended approval of the special exception. There were no persons who appeared in opposition to the Applicant's request.

CONCLUSION:

The Applicant is requesting a Special Exception pursuant to Section 267-53D(1) of the Harford County Code, to allow storage of commercial vehicles in an AG/Agricultural zone. 267-53D(1) provides as follows:

“Commercial vehicle and equipment storage and farm vehicle and equipment sales and service. These uses may be granted in the AG District, and commercial vehicle and equipment storage may be granted in the VB District, provided that:

- (a) The vehicles and equipment are stored entirely within an enclosed building or are fully screened from view of adjacent residential lots and public roads.
- (b) The sales and service of construction and industrial equipment may be permitted as an accessory use incidental to the sales and service of farm vehicles and equipment.
- (c) A minimum parcel area of two (2) acres shall be provided.”

Section 267-51 provides:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

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Section 267-52 provides:

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.**
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.**
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.**
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.**
- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.**

The Hearing Examiner finds that the Applicant's request meets the minimum requirements set forth in the Code for the grant of a Special Exception. The property is of sufficient acreage and the vehicles are entirely screened from the view of adjacent properties.

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In addition to meeting the technical minimum requirements of the Code, the further standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

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The Hearing Examiner concludes that this use at this location will not have any adverse impacts above and beyond those inherent with the storage of construction vehicles at any other location within the AG zone. The Hearing Examiner has considered the Limitations, Guides and Standards set forth at Section 267-9I and finds no adverse impact with regard to any of the considerations set forth therein.

The Hearing Examiner therefore recommends approval of the Special Exception, subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. At such time that the Applicant seeks to construct a building to house the equipment he obtain any and all necessary permits and inspections.
3. That this Special Exception use shall cease at such time as the Applicant no longer owns the subject parcel.
4. That no additional equipment other than that described by the Applicant herein be stored on the property. Replacements of existing equipment shall be allowed so long as the vehicle replaced is discarded and not stored in inoperative condition on the parcel.
5. That no storage of fuels is allowed.
6. Only minor vehicle maintenance is permitted.

Date SEPTEMBER 6, 2000

William F. Casey
Zoning Hearing Examiner